

Sukhidir bin Kemat v Premium Proaktif Sdn Bhd

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT
NO WA-22NCvC-239-04 OF 2022
GAN TECHIONG JC
4 APRIL 2024

Civil Procedure — Judgment — Amendment — Application to amend sealed judgment — Sealed judgement contained the exact words of plaintiff's prayers in amended statement of claim — Whether O 20 r 11 and O 92 r 4 of Rules of Court 2012 applicable — Whether there was 'clerical mistakes' or 'any accidental slip or omission' in sealed judgment — Whether sealed judgment did correctly reflect intention of court — Whether plaintiff's application to amend sealed judgment was an attempt to improve sealed judgment — Whether it was just for court to allow plaintiff's application to amend sealed judgment when defendant's appeal against sealed judgment was pending before Court of Appeal — Rules of Court 2012 O 20 r 11 & O 92 r 4

The plaintiff's claim against the defendant was premised on an oral agreement in which the parties agreed that in consideration of the assistance by the plaintiff to submit the defendant's application to the then Prime Minister for approval of 'permit terbuka mengimport kenderaan', the defendant agreed to give the plaintiff interest of 30% from any revenue from the motor vehicle import permit. The plaintiff's prayers, as pleaded in his amended statement of claim, was allowed and the plaintiff's solicitors had proceeded to draft and extract the sealed judgment in terms of prayers (1) and (2) of the plaintiff's amended statement of claim. The second paragraph of the sealed judgment provided that: 'Defendan hendaklah membayar kepada Plaintiff semua jumlah yang didapati terhutang kepada Plaintiff pada pengambilan akaun'. There was no clerical error in the sealed judgment as it contained the exact same prayers of the plaintiff's amended statement of claim but still, the plaintiff filed the present application ('encl 95') pursuant to O 20 r 11 and O 92 r 4 of the Rules of Court 2012 ('the ROC') to amend the said paragraph as followed: 'Defendan hendaklah membayar kepada Plaintiff 30% daripada hasil yang terjana oleh Defendan daripada perniagaan permit terbuka mengimport kenderaan dari tahun 2019 hinggalah kini pada pengambilan akaun'. The plaintiff contended that the sealed judgment failed to reflect the ground of judgment.

Held, dismissing encl 95:

- A (1) The sealed judgment was drawn up per the prayers in the amended statement of claim after a full trial was held. It would not come under any of the exceptions permissible in law — as enunciated in *Hock Hua Bank Bhd v Sahari bin Murid* [1981] 1 MLJ 143. There was nothing in O 20 r 11 of the ROC to authorise the court to amend the said sealed judgment because the amendments sought by the plaintiff (in encl 95) were neither ‘clerical mistakes’ nor ‘any accidental slip or omission’. Hence, O 20 r 11 was clearly inapplicable. Order 92 r 4 of the ROC, which was a general rule on the inherent jurisdiction of the court to prevent injustice, was also inapplicable in this case. This was because the sealed judgment did correctly reflect the intention of the court which was to grant judgment in terms of the plaintiff’s prayers in his amended statement of claim. If, after having amended his statement of claim before the trial commenced, the prayers were still incorrect or insufficient, O 92 r 4 did not empower the court to overcome trite law: that the court was functus officio (see paras 9 & 11).
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- E (2) The amendments sought by the plaintiff were, in essence, an attempt to improve the sealed judgment, to order the defendant to pay to the plaintiff 30% of the defendant’s revenue from its vehicles import business from year 2019 to date, instead of proceeding to execute the sealed judgement as it is. If the plaintiff had intended to seek payment of an exact percentage of 30% of the defendant’s revenue as from year 2019, the onus was on the plaintiff to plead the same in the prayers of his amended statement of claim. Further, the defendant’s appeal against the sealed judgment was still pending at the Court of Appeal. It would be patently unjust to allow any amendment to the sealed judgment — which would allow the plaintiff to improve on his case post-judgment — while the defendant’s appeal against the said judgment was pending at the Court of Appeal (see paras 11 & 13).
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[Bahasa Malaysia summary]

- H Tuntutan plaintiff terhadap defendan adalah berdasarkan perjanjian lisan di mana pihak-pihak bersetuju bahawa sebagai balasan kepada bantuan oleh plaintiff untuk mengemukakan permohonan defendan kepada Perdana Menteri ketika itu untuk kelulusan ‘permit terbuka mengimport kenderaan’, defendan bersetuju untuk memberi plaintiff kepentingan sebanyak 30% daripada apa-apa hasil daripada permit import kenderaan bermotor tersebut. Permohonan plaintiff, seperti yang dihidang dalam pernyataan tuntutan terpendanya, telah dibenarkan dan peguamcara plaintiff telah meneruskan untuk merangka dan membuat cabutan penghakiman termeterai mengikut terma-terma permohonan (1) dan (2) pernyataan tuntutan terpenda plaintiff. Perenggan kedua penghakiman termeterai tersebut memperuntukkan bahawa: ‘Defendan hendaklah membayar kepada Plaintiff semua jumlah yang didapati terhutang kepada Plaintiff pada pengambilan akaun’. Tiada kesilapan
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perkeranian dalam penghakiman termeterai tersebut kerana ia mengandungi permohonan yang sama persis dengan pernyataan tuntutan terpinda plaintif tetapi plaintif tetap memfailkan permohonan semasa ('lampiran 95') menurut A 20 k 11 dan A 92 k 4 Kaedah-Kaedah Mahkamah 2012 ('KKM 2012') untuk meminda perenggan tersebut seperti berikut: 'Defendan hendaklah membayar kepada Plaintif 30% daripada hasil yang terjana oleh Defendan daripada perniagaan permit terbuka mengimport kenderaan dari tahun 2019 hinggalah kini pada pengambilan akaun'. Plaintif berhujah bahawa penghakiman termeterai tersebut gagal menggambarkan alasan penghakiman.

Diputuskan, menolak lampiran 95:

- (1) Penghakiman termeterai tersebut telah disediakan mengikut permohonan-permohonan dalam pernyataan tuntutan terpinda tersebut selepas perbicaraan penuh diadakan. Ia tidak akan tertakluk di bawah mana-mana pengecualian yang dibenarkan dalam undang-undang — seperti yang dinyatakan dalam *Hock Hua Bank Bhd v Sahari bin Murid* [1981] 1 MLJ 143. Tiada apa-apa dalam A 20 k 11 KKM 2012 untuk memberi kuasa kepada mahkamah untuk meminda penghakiman termeterai tersebut kerana pindaan yang dipohon oleh plaintif (dalam lampiran 95) bukanlah 'clerical mistakes' mahupun 'any accidental slip or omission'. Oleh itu, A 20 k 11 jelas tidak terpakai. Aturan 92 k 4 KKM 2012, yang merupakan peraturan am mengenai bidang kuasa sedia ada mahkamah untuk mencegah ketidakadilan, juga tidak terpakai dalam kes ini. Ini kerana penghakiman termeterai tersebut betul-betul mencerminkan niat mahkamah yang mahu memberikan penghakiman mengikut terma-terma yang dipohon oleh plaintif dalam pernyataan tuntutan terpendanya. Jika, selepas meminda pernyataan tuntutananya sebelum perbicaraan dimulakan, permohonan tersebut masih tidak betul atau tidak mencukupi, A 92 k 4 tidak memberi kuasa kepada mahkamah untuk mengatasi undang-undang yang mantap: bahawa mahkamah telah functus officio (lihat perenggan 9 & 11).
- (2) Pindaan yang dimohon oleh plaintif adalah, pada asasnya, percubaan untuk menambah baik penghakiman termeterai tersebut, untuk memerintahkan defendan membayar kepada plaintif 30% daripada hasil defendan daripada perniagaan import kenderaannya dari tahun 2019 hingga kini, bukannya meneruskan untuk melaksanakan penghakiman yang dimeterai sebagaimana adanya. Jika plaintif berhasrat untuk mendapatkan bayaran peratusan tepat 30% daripada hasil defendan mulai tahun 2019, plaintif bertanggungjawab untuk memplid perkara yang sama dalam permohonan-permohonan didalam pernyataan tuntutan terpendanya. Selanjutnya, rayuan defendan terhadap penghakiman termeterai tersebut masih belum selesai di Mahkamah Rayuan. Adalah menjadi sesuatu yang jelas tidak adil untuk mahkamah membenarkan apa-apa pindaan kepada penghakiman termeterai

A tersebut — yang akan membolehkan plaintif menambah baik kesnya selepas penghakiman — sedangkan rayuan defendan terhadap penghakiman tersebut masih belum selesai di Mahkamah Rayuan (lihat perenggan 11 & 13).]

B **Cases referred to**

Hock Hua Bank Bhd v Sahari bin Murid [1981] 1 MLJ 143, FC (refd)
Woolley Development Sdn Bhd v Stadco Sdn Bhd (No 1) [2011] 6 MLJ 111, CA (refd)

C **Legislation referred to**

Rules of Court 2012 O 20 r 11, O 92 r 4

Ivan Teng Jun Hong (Fahri, Azzat & Co) for the plaintiff.

D *Hasshahari bin Johari Mawi (with Mahzal Nazrin bin Mahat) (Hasshahari & Partners) for the defendant.*

Gan Techiong JC:

INTRODUCTION

E [1] An ‘answered prayer’ might not be a good thing if one had not prayed for the right thing — as the plaintiff in this case had probably realised. ‘Prayers’ in the context of court proceedings, have nothing to do with religion. They are the remedies/orders that a plaintiff is praying (applying) for a court to order in his
F favour, and are usually pleaded in the final paragraph of statements of claims filed in civil suits.

[2] In this case, the plaintiff’s claim was based on an *oral agreement*, pleaded as having been made sometime in May 2016 whereby the plaintiff assisted the
G defendant to submit the defendant’s application to the then Prime Minister Dato’ Sri Najib bin Tun Razak for approval of ‘permit terbuka mengimport kenderaan’ and the defendant was to give the plaintiff interest (*kepentingan*) of 30% from any revenue from the motor vehicle import permit.

H [3] The plaintiff’s prayers, as pleaded in his amended statement of claim, was allowed on 26th September 2023 by my predecessor judge after a full trial. After Justice Rozana Ali Yusoff’s decision was pronounced, the plaintiff’s solicitors proceeded to draft and extract a sealed judgment in terms of prayers (1) and (2) of the plaintiff’s amended statement of claim — which they had
I rightly done, on 25 October 2023. The relevant part of the sealed judgment dated 26 September 2023 is as follows:

saksi-saksi yang dikemukakan, **MAKA ADALAH PADA HARI INI DIHAKIMKAN** bahawa:

- (1) Defendan hendaklah menyediakan suatu akaun hasil yang terjana oleh Defendan daripada permit terbuka mengimport kenderaan dari tahun 2019 hinggalah kini;
- (2) Defendan hendaklah membayar kepada Plaintiff semua jumlah yang didapati terhutang kepada Plaintiff pada pengambilan akaun;

[4] There was no clerical error in the said judgment. it contained the exact prayers of the plaintiff's amended statement of claim, as could be seen at para 21(a) and (b) thereof:

18. 21. OLEH YANG DEMIKIAN, Plaintiff menuntut terhadap Defendan:

- (a) Suatu akaun hasil yang terjana oleh Defendan daripada permit terbuka mengimport kenderaan dari tahun 2019 hinggalah kini;
- (b) Suatu perintah untuk pembayaran oleh Defendan kepada Plaintiff semua jumlah yang didapati terhutang kepada Plaintiff pada pengambilan akaun;

THE PLAINTIFF'S APPLICATION (ENCL 95) TO AMEND THE SEALED JUDGMENT

[5] On 21 March 2024, which was about five months after extracting the sealed judgment dated 26 September 2023, the plaintiff filed his application (encl 95) pursuant to O 20 r 11 and O 92 r 4 Rules of Court 2012, to seek an order to amend the second paragraph of the sealed judgment dated 26 September 2023, as follows:

- (1) Perintah dalam perenggan (2) Penghakiman bertarikh 26.9.2023 ('Penghakiman tersebut') dipinda seperti berikut:

Defendan hendaklah membayar kepada Plaintiff 30% daripada hasil yang terjana oleh Defendan daripada perniagaan permit terbuka mengimport kenderaan dari tahun 2019 hinggalah kini pada pengambilan akaun.

A [6] The affidavit in support of the said application was affirmed by the plaintiff's solicitor, who averred, inter alia, that the sealed judgment failed to reflect the grounds of judgment:

B 8. Saya sesungguhnya menyatakan bahawa kegagalan Penghakiman Mahkamah untuk mencerminkan Alasan Penghakiman dari segi tersebut adalah suatu kecaciran atau peninggalan oleh Plaintiff yang tidak sengaja, dan ia wajar diperbetulkan melalui Permohonan ini untuk menghapuskan sebarang kekeliruan dan/atau keraguan berkenaan dengan penghakiman tersebut, dan untuk memastikan bahawa Penghakiman Mahkamah mencerminkan dengan setepat-tepatnya perintah-perintah yang dihakimi oleh Mahkamah yang Mulia ini.

D ANALYSIS OF THE FACTS AND LAW

E [7] Though the plaintiff's application (encl 95) was heard together with two other applications, ie encl 77 filed by the plaintiff and encl 82 filed by the defendant, I shall only be stating my grounds for deciding to dismiss the plaintiff's said application (encl 95) because the plaintiff has filed an appeal only regarding encl 95.

F [8] I am of the view that the plaintiff's application, made under O 20 r 11 and O 92 r 4 Rules of Court 2012, was misconceived. O 20 r 11, which is commonly referred to as 'the Slip Rule' states:

Clerical mistakes in judgment or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the Court by a notice of application without an appeal.

G [9] With respect, there is nothing in O 20 r 11 to authorise this court to amend the said sealed judgment because the amendments sought by the plaintiff (in encl 95) were neither 'clerical mistakes' nor 'any accidental slip or omission'. Hence, O 20 r 11 was clearly inapplicable. As for O 92 rule 4 which H is a general rule on the inherent jurisdiction of the court to prevent injustice, I am of the view that it was also inapplicable in this case. As pointed out above, the sealed judgment did correctly reflect the intention of my predecessor judge — which was to grant judgment in terms of the plaintiff's prayers in his amended statement of claim. If, after having amended his statement of claim I before the trial commenced, the prayers are still incorrect or insufficient, O 92 r 4 does not empower this court to overcome trite law: that the court is functus officio.

[10] In the oft-quoted judgment of the Federal Court in *Hock Hua Bank Bhd*

v Sahari bin Murid [1981] 1 MLJ 143, it was held as follows:

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Clearly the court has no power under any application in the same action to alter vary or set aside a judgment regularly obtained after it has been entered or an order after it is drawn up, except under the slip rule in O 28 r 11 Rules of the Supreme Court 1957 O 20 r 11 Rules of the High Court 1980) so far as is necessary to correct errors in expressing the intention of the court: *Re St Nazaire Co* 12 Ch D 88, *Kelsey v Doune* [1912] 2 KB 482; *Hession v Jones* [1914] 2 KB 421, unless it is a judgment by default or made in the absence of a party at the trial or hearing.

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[11] As highlighted above, the sealed judgment was drawn up per the prayers in the amended statement of claim after a full trial was held. It would not come under any of the exceptions permissible in law — as enunciated in *Hock Hua Bank Bhd v Sahari bin Murid*. The amendments sought by the plaintiff were, in essence, an attempt to improve the sealed judgment, to order the defendant to pay to the plaintiff 30% of the defendant's revenue from its vehicles import business from year 2019 to date, instead of proceeding to execute the sealed judgment as it is. If the plaintiff had intended to seek payment of an exact percentage of 30% of the defendant's revenue as from year 2019, the onus was on the plaintiff to plead the same in the prayers of his amended statement of claim. Since my predecessor had granted order in terms of the plaintiff's prayers as pleaded in his amended statement of claim and *the sealed judgment contained the exact words of the prayers*, I am of the view that this court is functus officio after having issued a sealed judgment in terms of the plaintiff's prayers (as prayed for in his amended statement of claim).

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[12] The importance of pleading accurately with sufficient particulars was emphasised by the Court of Appeal in *Woolley Development Sdn Bhd v Stadco Sdn Bhd (No 1)* [2011] 6 MLJ 111. The Court of Appeal allowed Woolley's appeal and set aside a default judgment on the ground that a judgment that failed to state its subject matter with certainty is a nullity. Malik Ishak JCA (as he then was) writing for the Court of Appeal pointed out as follows:

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[5] It is apparent that the said judgment failed completely to state the subject matter of the judgment. Though we were only concerned with the part of the judgment against the second defendant, it is pertinent to point out that the part of the judgment against the first defendant also did not state its subject matter with certainty.

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[11] As expounded above, the Federal Court ruled that it was not permissible to look at extrinsic evidence to attempt to resolve ambiguities in a judgment. *This is actually common sense because a judgment ought to, on the face of it, be clear enough to enable compliance. In Tuan Hj Ahmed the Federal Court held that the judgment which failed to define the calculation of interest with certainty was a nullity and could be set aside at any time ex debito justitiae.*

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A CONCLUSION

[13] Further, the defendant's appeal against the sealed judgment is still pending at the Court of Appeal. It would, in my view, be patently unjust to allow any amendment to the sealed judgment — which would allow the plaintiff to improve on his case post-judgment — while the defendant's appeal against the said judgment is pending at the Court of Appeal.

[14] I would conclude with the following summary. I found no error in the sealed judgment that could justify any amendment pursuant to O 20 r 11 and also no error in the intention of the court in granting a judgment in terms of the plaintiff's prayers (as prayed for in his amended statement of claim) to justify any alteration of the sealed judgment under the limited exceptions set out by the Federal Court in *Hock Hua Bank Bhd v Sahari bin Murid*. There is no power to over-ride the trite rule that this Court was *functus officio* after having allowed the plaintiff's prayers and sealed the fair copy of the judgment filed by the plaintiff on 25 October 2023. Even assuming for a moment that this court was not *functus officio*, I would still have dismissed the plaintiff's application because it would be blatantly unjust to allow any amendment to the said judgment while the defendant's appeal against it is pending at the Court of Appeal.

[15] By reason of the facts and law as set out above, I dismissed the plaintiff's application (encl 95) which was to amend/alter the sealed judgment dated 26 September 2023.

Enclosure 95 dismissed.

Reported by Dzulqarnain Ab Fatar

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